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Supreme Court, U.S.
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No. 94-1243

In the
Supreme Court of the United States
October Term, 1994

Steven I. Radloff and Barbara Radloff,

Petitioners,

vs.

First American National Bank of St. Cloud, N.A.; and First Farm Corporation, Inc. of St. Cloud, a Minnesota Corporation, Linda Sinotte, in her official capacity as a Court Administrator,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

REPLY BRIEF TO BRIEF IN OPPOSITION

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Radloffs supplement their petition under Sup. Ct. Rule 15.7 with a new case and reply to the brief in opposition under Sup. Ct. Rule 15.6.

1. New Case.

On February 16, 1995, the Eighth Circuit decided *Charchenko v. City of Stillwater*, Docket No. 94-1446, 1995 WL 61432, in which the circuit court reversed a trial court's holding that the *Rooker-Feldman* doctrine precluded its subject matter jurisdiction to hear a 42 U.S.C. § 1983 claim. Charchenko was a part-time police officer who challenged his termination and specifically pled a 42 U.S.C. § 1983 based claim in state court, against the same defendants, alleging constitutional violations. That proceeding was brought on a complaint, not a state court petition for certiorari. Without the correct pleading, the state court dismissed his claim for want of subject matter jurisdiction. In reversing the federal trial court, the appellate court stated: "divestment of state court jurisdiction does not affect the other alternate available: the federal forum. Accordingly, *Rooker-Feldman* does not bar Charchenko's § 1983 suit." Slip Op. p. 5.

The circuit court also reversed the federal trial court on the issue of preclusion. It held: "Before either claim or issue preclusion will bar a claim, the earlier decision must have been on the merits . . . In Minnesota, a judgment by a court that lacks subject matter jurisdiction is not considered to be 'on the merits'. *Hauser v. Mealey*, 263 N.W.2d 803, 808 (Minn. 1978) . . ." *Charchenko*, Slip Op. p. 6.

Petitioners cited to *Hauser v. Mealey*, for the same position taken by the circuit court in *Charchenko*. Petition p. 9.

2. Reply to the Brief in Opposition.

Radloffs cite to only three critical omissions made by Respondents in their Brief in Opposition.

First, respondents cite to *Lynk v. LaPort Superior Court No. 2*, 789 F.2d 554, 564 (7th Cir. 1986) as supporting their position on the *Rooker-Feldman* doctrine. Lynk held, apposite to Radloffs' position that *Rooker-Feldman* is inapplicable where

> "a state court refuses to allow federal rights to be enforced in its courts[,] it can hardly object to the federal courts, enforcing them, . . ." 759 F.2d at 564.

The Lynk, court reversed and remanded to the trial court its dismissal based on the *Rooker-Feldman* doctrine. Id, at 565.

Second, *Matson v. Underwriters at Lloyds Of London*, 414 N.W.2d 727, 721-722 (Minn. 1987), has nothing to due with undisclosed and concealed *ex parte* contacts. The words *ex parte* do not appear in the *Matson*. Respondents' suggest the opposite position. Respondents' Brief, p. 17. Each state court dismissal of Radloffs' motions or petitions to remove Judge Baland was premised on a lack of subject matter jurisdiction by citing *Matson*. Petition, App. p. 19. The merits of Radloffs' constitutional torts claims against Respondents have yet to be decided by a court with jurisdiction. Radloffs' current claims are not barred by a state court that refused to take jurisdiction. Charchenko v. City of Stillwater, citing, Hauser v. Mealey, supra.

Third, Respondents do not dispute that a conspiracy with a state judge allows the injured party to sue the non-judicial party for damages under Dennis v. Sparks, 449 U.S. 24, 27-28 (1980).

Due process requires an impartial tribunal with jurisdiction to address the merits of Radloffs' claim. When such is denied then a person's constitutional right to due process has been deprived. The question presented for review by Radloffs is ripe for this Court's consideration.

Dated: February 23, 1995

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